

U.S. Army Corps  
of Engineers  
Baltimore District

# Public Notice

In Reply to Application Number  
CENAB-OP-RMN(MD DNR/ALTERNATE MATERIAL)  
2007-03659-M24

PN-07-83

Comment Period: 26 December 2007 to 26 January 2008

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THE PURPOSE OF THIS PUBLIC NOTICE IS TO SOLICIT COMMENTS FROM THE PUBLIC ABOUT THE WORK DESCRIBED BELOW. AT THIS TIME, NO DECISION HAS BEEN MADE AS TO WHETHER OR NOT A PERMIT WILL BE ISSUED.

The Baltimore District has received an application for a Department of the Army Permit pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344), as described below:

APPLICANT: Maryland Department of Natural Resources  
Fisheries Service  
580 Taylor Ave. B-2  
Annapolis, Maryland 21401

LOCATION: Chesapeake Bay and tributaries

WORK: This project will permit the Maryland Department of Natural Resources (MD DNR) to plant alternate (non-oyster shell) materials within Maryland chartered oyster bars in the Chesapeake Bay for the purpose of rehabilitating oyster bar habitat to work towards the re-establishment of an abundant and self-sustaining oyster population in support of the Chesapeake Bay Program 2000 Agreement and 2005 Oyster Management Plan.

Permit Time Period: A 10-year period from 2007 through 2016 is being requested.

Location of Alternate Material Plantings: Alternate material plantings will be made in the Maryland Chesapeake Bay and its tributaries upon chartered oyster bars as mapped on the legal oyster bar charts maintained by the Department. The attachment illustrates the chartered bars. For detailed bar boundaries, a set of large-scale charts can be obtained from MD DNR.

The identification of alternate material planting areas will be coordinated on an annual basis with the Oyster Advisory Commission, the Tidewater Oyster Committees composed of harvesters, and other interested parties, and will be consistent with the guidelines provided in the Chesapeake Bay Program Oyster Management Plan.

Alternate material plantings may occur within the following oyster bar management designations: sanctuaries, harvest reserves and open harvest areas.

Type of Alternate Materials: This permit will approve the planting of the following alternate (non-oyster shell) materials: clam shell, marl, concrete, stone, slag, brick, and cinderblock. Any concrete rubble to be planted would be free of building debris such as wiring, pipes, and other debris. No

protruding re-bar is allowed. Concrete may also include man-made products formed into various shapes to provide benthic habitat (i.e. reef balls).

Sizes of Alternate Materials: The size of individual pieces of material used will vary with the material type and project purpose. For example, a harvest bar would be planted with smaller sized material (1" to 3" estimated) that would not interfere with harvest gear, while a sanctuary area could use larger materials to provide relief for the benthic population. No materials will be utilized larger than 12" in size.

Note that even in low setting areas, these materials are important as habitat to prepare a base for the planting of hatchery seed. If other types of materials become available, MD DNR will present the new information to the permit agencies, Oyster Advisory Commission and the Tidewater Oyster Committees for review to determine if the planting of this material could be approved through an amendment to this permit, or if a new permit application would need to be submitted.

Amount & Acreage of Alternate Material: Authorization is requested for the planting of up to 1.5 million cubic yards of alternate material from 2007-2016. This volume can create about 1,600 acres of habitat at a planting thickness of 6" per acre. Some sites will be planted less than 6" thick and others higher, therefore the value of 1,600 acres is a reasonable estimate for this program.

The amount of material to be planted on an annual basis will be based upon the objectives and strategies of Maryland's oyster recovery program as well as the availability of the materials and funding. Based upon current cost projections for the procurement, transportation and planting of alternate materials, it is estimated that approximately 25 acres of material could be planted per million dollars of available funding (assumes average planting thickness of 6-inches).

Planting Methods: Alternate materials will be planted primarily by tugboat and barge but may also be planted using large workboats. With either barges or large workboats, the material will be washed overboard using high pressure water hoses or cannons, with the vessel moving continuously through the planting area to control the thickness and acreage of the planting. Alternate materials may also be planted using a crane/excavator or front-end loader to place material on the oyster bar. To date, the majority of alternate material plantings have been less than one foot in height off of the bottom.

Additional Planting Restrictions:

- *Minimum water column clearance:* The planting of alternate materials will maintain a minimum eight feet of clearance in the water column at mean low water, Reefball plantings will maintain 10 feet of clearance.
- *Protection of submerged aquatic vegetation:* The planting of alternate materials will not be permitted within 300 feet of submerged aquatic vegetation as mapped and reported annually by the Virginia Institute of Marine Sciences in coordination with the MD DNR Resource Assessment Service.

All work is to be completed in accordance with the enclosed plan(s). If you have any questions concerning this matter, please contact Ms. Mary Frazier at 410-962-5679 or [Mary.A.Frazier@usace.army.mil](mailto:Mary.A.Frazier@usace.army.mil).

The Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), as amended by the Sustainable Fisheries Act of 1996 (Public Law 04-267), requires all Federal agencies to consult with the National Marine Fisheries Service (NMFS) on all actions, or proposed actions, permitted, funded, or undertaken by the agency that may adversely effect essential fish habitat (EFH).

The project site lies in or adjacent to EFH as described under MSFCMA for Scophthalmus aquosus (windowpane flounder) juvenile and adult; Pomatomus saltatrix (blue fish) juvenile and adult; Paralichthys dentatus (summer flounder) juvenile and adult; Peprilis triacanthos (Atlantic butterflyfish) eggs, larvae, juvenile and adult ; Centropristus striata (black sea bass) juvenile and adult; eggs, larvae, juvenile, and adult stages of Sciaenops ocellatus (red drum), Scomberomorus cavalla (king mackerel), Scomberomorus maculatus (spanish mackerel), and Rachycentron canadum (cobia), all managed species under the MSFCMA

The project has the potential to adversely affect EFH or the species of concern by loss of nursery, forage and/or shelter habitat. The project may have an adverse effect on Essential Fish Habitat as described under the Magnuson-Stevens Fishery Conservation and Management Act for the species and life stages identified above. However, the District Engineer has made a preliminary determination that site-specific impacts would not be substantial and an abbreviated consultation will be conducted with NMFS. This determination may be modified if additional information indicates otherwise and would change the preliminary determination.

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, and, in general, the needs and welfare of the people.

The Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials: Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

The applicant is required to obtain a water quality certification in accordance with Section 401 of the Clean Water Act from the District of Columbia Department of the Environment. Any written comments concerning the work described above which relate to water quality certification must be received by the Water Quality Division, District of Columbia Department of the Environment, 51 N Street, NE, 5<sup>th</sup> Floor, Washington, DC 20002 within the comment period as specified above to receive consideration. Written comments concerning the work described above related to the

factors listed above or other pertinent factors must be received by the District Engineer, US Army Corps of Engineers, Baltimore District, PO Box 1715, Baltimore, Maryland 21230-1715, within the comment period as specified above to receive consideration. The 401 certifying agency has a statutory limit of one year to make its decision.

The applicant must obtain any State or local government permits which may be required.

A preliminary review of this application indicates that the proposed work will not affect listed species or their critical habitat pursuant to Section 7 of the Endangered Species Act as amended. As the evaluation of this application continues, additional information may become available which could modify this preliminary determination.

The Maryland Historical Trust is reviewing the project to assess its effects on historic properties pursuant to Section 106 of the National Historic Preservation Act of 1966. Currently unknown archeological, scientific, prehistoric, or historical data may be lost or destroyed by the work to be accomplished under the requested permit.

The evaluation of the impact of the work described above on the public interest will include application of the guidelines promulgated by the Administrator, U.S. Environmental Protection Agency, under authority of Section 404 of the Clean Water Act. Any person who has an interest which may be adversely affected by the issuance of this permit may request a public hearing. The request, which must be in writing, must be received by the District Engineer, US Army Corps of Engineers, Baltimore District, PO Box 1715, Baltimore, Maryland 21203-1715, within the comment period as specified as above to receive consideration. Also, it must clearly state forth the interest which may be adversely affected by this activity in the manner in which the interest may be adversely affected.

It is requested that you communicate the foregoing information concerning the proposed work to any persons known by you to be interested and not being known to this office, who did not receive a copy of this notice.



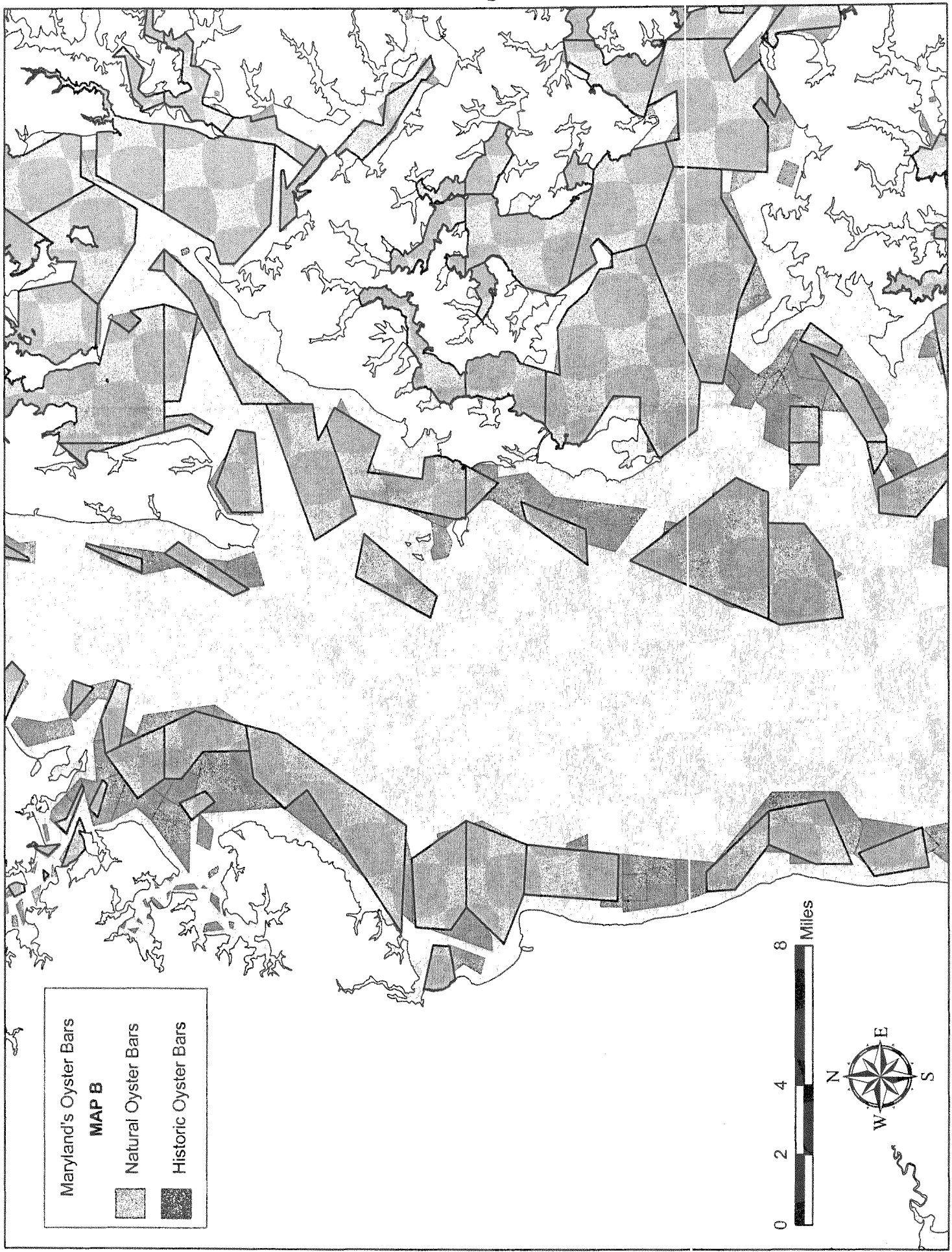
VANCE G. HOBBS  
Chief, Maryland Section Northern



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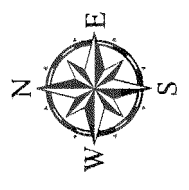
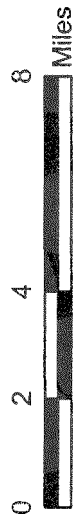


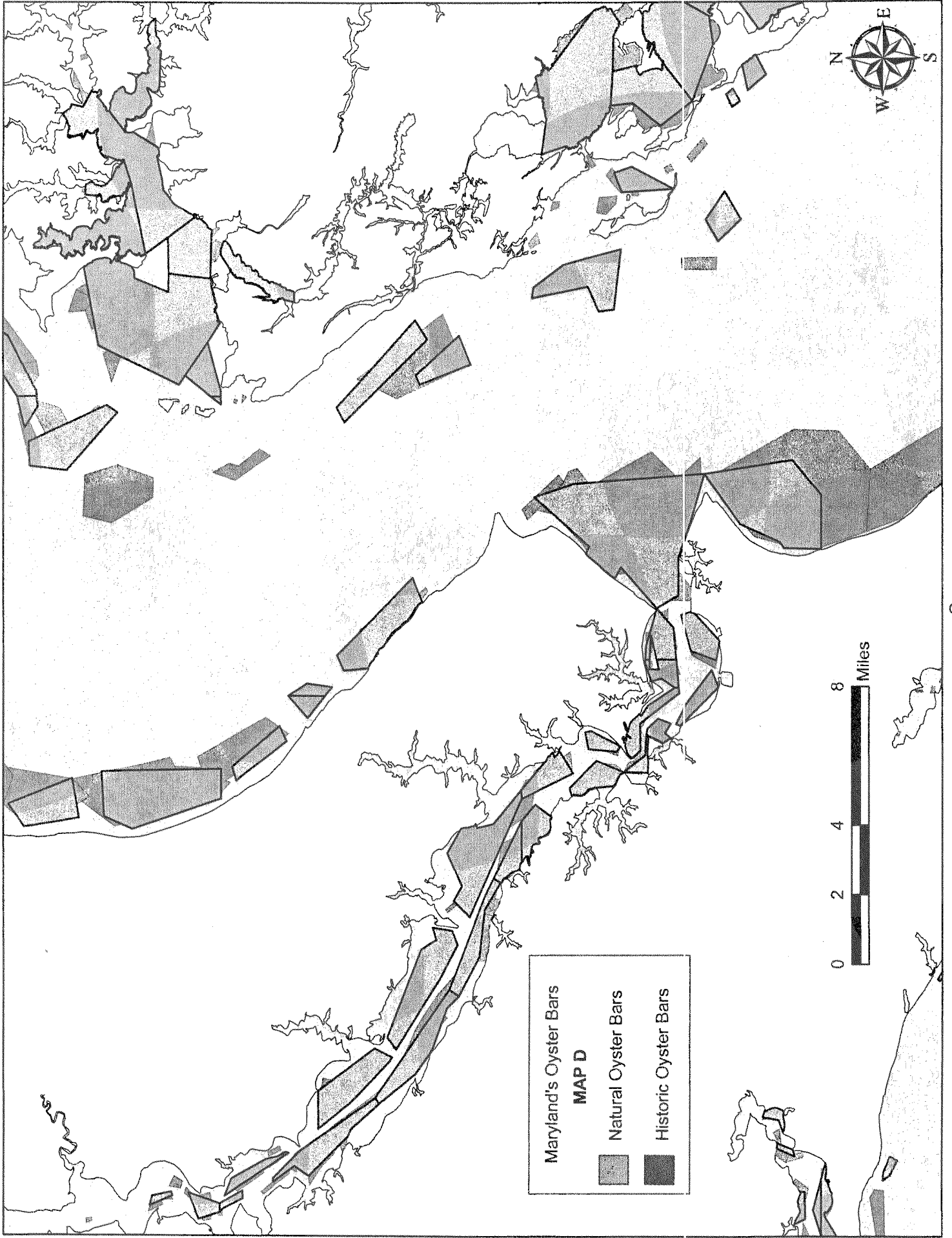
Maryland's Oyster Bars

MAP B

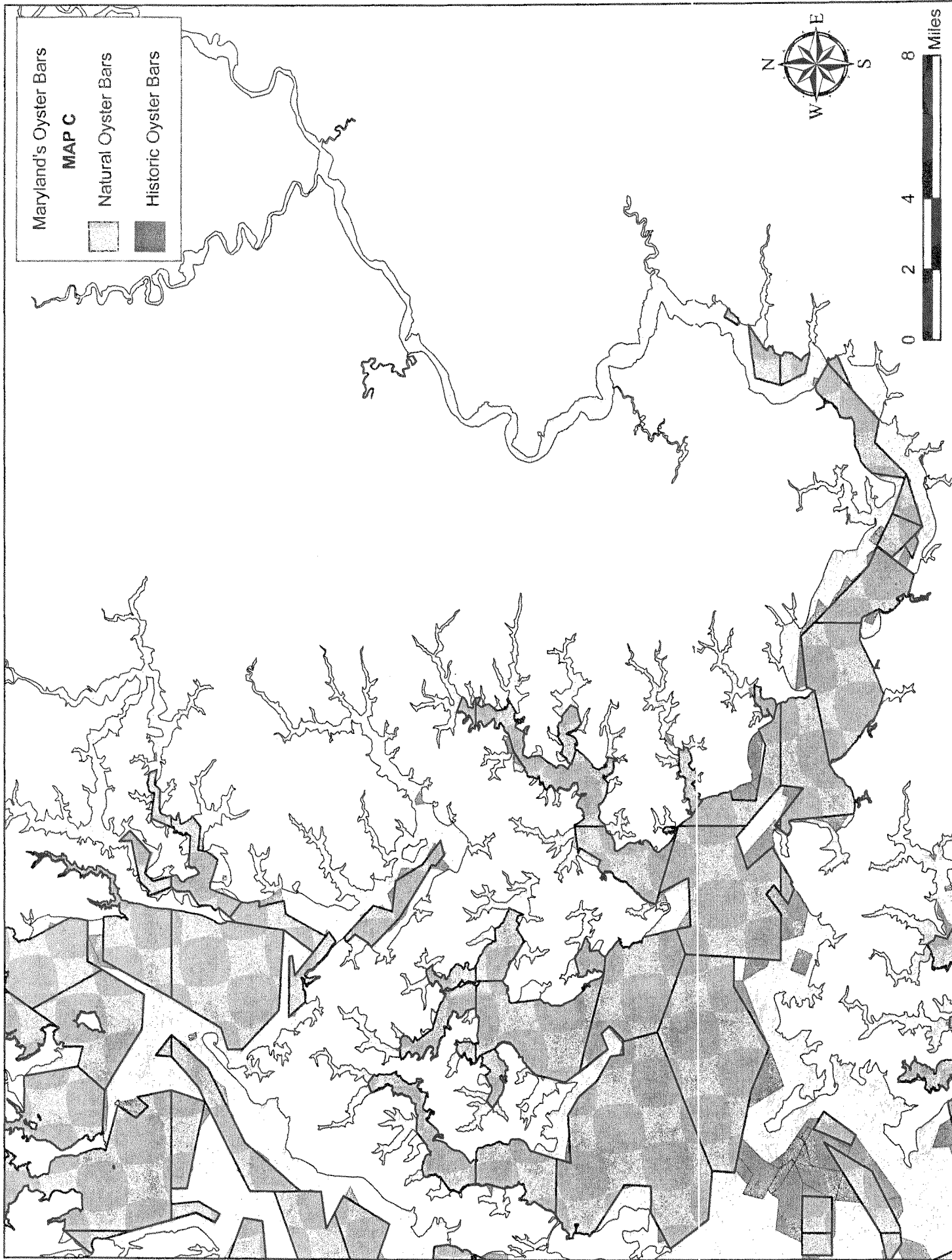
Natural Oyster Bars

Historic Oyster Bars



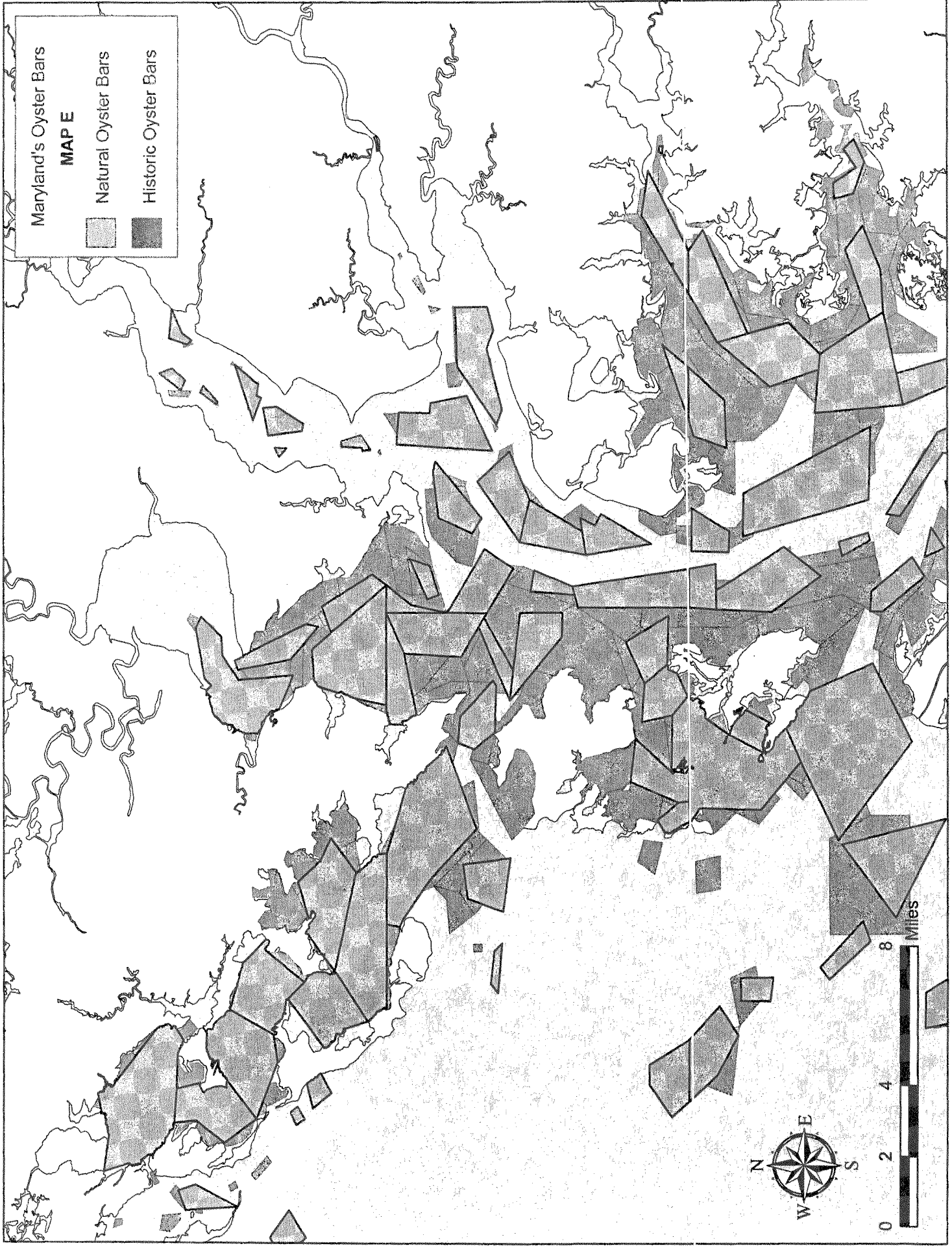




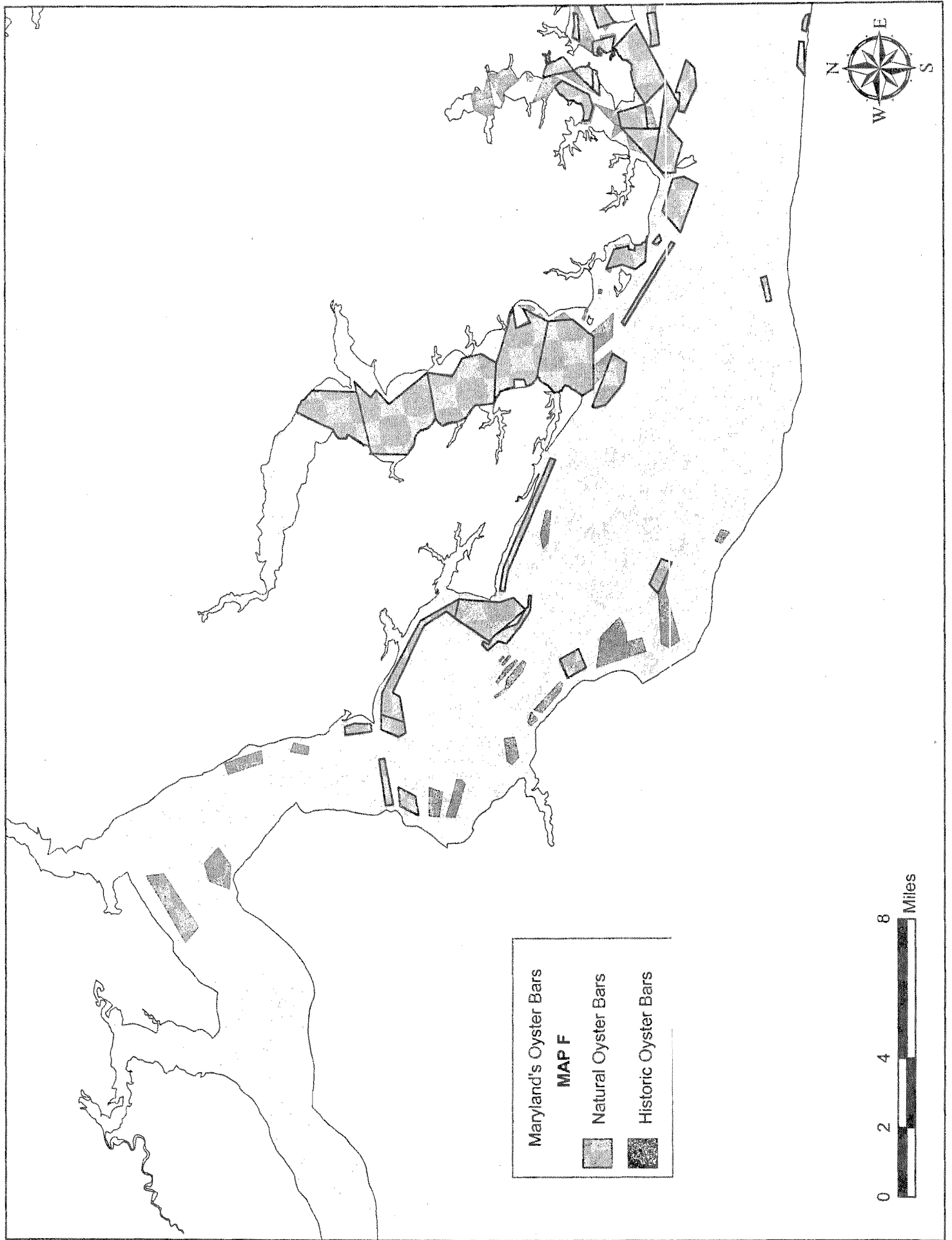




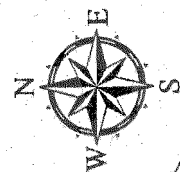
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Maryland's Oyster Bars

MAP G

Natural Oyster Bars

Historic Oyster Bars

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Maryland's Oyster Bars  
**MAP H**  
Natural Oyster Bars  
Historic Oyster Bars

